

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|                                  |   |                    |
|----------------------------------|---|--------------------|
| <b>THI BE COLLINS</b>            | ) |                    |
| Claimant                         | ) |                    |
| VS.                              | ) |                    |
|                                  | ) | Docket No. 198,933 |
| <b>PROVIDENCE MEDICAL CENTER</b> | ) |                    |
| Respondent                       | ) |                    |
| AND                              | ) |                    |
|                                  | ) |                    |
| <b>AETNA CASUALTY AND SURETY</b> | ) |                    |
| <b>INSURANCE COMPANY</b>         | ) |                    |
| Insurance Carrier                | ) |                    |

**ORDER**

On July 23, 1997, claimant's Application for Review by the Workers Compensation Appeals Board of the Award entered by Administrative Law Judge Robert H. Foerschler on February 12, 1997, came on for oral argument.

**APPEARANCES**

Claimant appeared by and through her attorney, Curtis L. Hursh of Kansas City, Missouri. Respondent and its insurance company appeared by and through their attorney, Gregory D. Worth of Lenexa, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations as specifically set forth in the Award of the administrative law judge are herein adopted by the Appeals Board.

**ISSUES**

1. Whether claimant is entitled to additional temporary total disability compensation after an adjustment in claimant's average weekly wage.
2. Claimant's entitlement to future medical treatment.
3. The nature and extent of claimant's injury and/or disability.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The Administrative Law Judge, finding that there was no assurance that any further medical treatment would benefit claimant, denied future medical compensation. K.S.A. 44-510 places no limitation upon the amount of medical treatment a claimant is allowed. The only qualifier is that the employer is obligated to provide the services of a health care provider as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

At the time of regular hearing, claimant experienced ongoing symptomatology as a result of the injuries suffered on the date of accident. While there may not be a guarantee that future medical treatment will be of benefit to claimant, the Appeals Board would be most reluctant to deny claimant the opportunity to obtain medical treatment if the need should arise at some later date. Therefore, the Appeals Board finds claimant entitled to future medical treatment upon application to and approval by the Director.

The claimant further contends the benefits ordered paid by the Administrative Law Judge were paid at an incorrect rate. The Administrative Law Judge found that the base average weekly wage of \$226.53 was appropriate when computing claimant's award, as ". . . the discontinuation of her fringe benefits were a matter of her refusal to return to accommodated work." K.S.A. 44-511 allows for the inclusion of additional compensation into the amount of claimant's average weekly wage when such remuneration is discontinued. There is no indication in the statute that the discontinuation shall be for any particular purpose. The mere fact that claimant is no longer receiving said remuneration is sufficient to require it be included in the average weekly wage.

At oral argument the parties stipulated that claimant's temporary total disability compensation was paid during a period of time when claimant continued to receive the additional compensation. As such, the \$226.53 average weekly wage would be applicable to any temporary total disability benefits received by claimant. However, at the time of claimant's termination on December 21, 1995, and thereafter, claimant was no longer receiving the additional compensation and the \$14.40 in additional compensation stipulated to by the parties should, as of that date, be added to claimant's average weekly wage for purposes of any permanent award.

With regard to the nature and extent of claimant's injury and/or disability, the Appeals Board finds that the Award of the administrative law judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the administrative law judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

The Appeals Board finds especially significant the multiple attempts by respondent to return claimant to employment, subsequent to the injury. Respondent made both verbal and written communications to claimant and her attorney regarding job openings and respondent's willingness to accommodate. The application by the administrative law judge of the policies in *Foult v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140, *rev. denied* 257 Kan. 1091 (1995), is applicable to this case. Claimant's refusal to attempt the offered, modified and accommodated jobs should not entitle claimant to receive permanent partial disability benefits in excess of her percentage of functional impairment.

Wherefore, the Appeals Board finds the Award of the administrative law judge limiting claimant to her functional impairment is affirmed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler, dated February 12, 1997, should be, and is hereby modified with regard to claimant's entitlement to future medical treatment and with regard to the average weekly wage used to compute claimant's benefits and affirmed with regard to the award of permanency.

**WHEREFORE**, an award is hereby granted in favor of the claimant, Thi Be Collins, and against the respondent, Providence Medical Center, and its insurance carrier, AETNA Casualty and Surety Insurance Company, for an accidental injury sustained on March 16, 1994. Claimant is entitled to 75.86 weeks of temporary total disability compensation on the rate of \$151.03 per week based upon an average weekly wage of \$226.53, in the amount of \$11,457.14, followed by 81.45 weeks of permanent partial disability compensation at the rate of \$160.63, based upon an average weekly wage (including fringe benefits) of \$240.93, in the amount of \$13,083.31, making a total award of \$24,540.45, for a 23 percent permanent partial general body disability, all of which is due and owing, and ordered paid in one lump sum, minus the amounts previously paid.

The fees associated with the cost of the administration of the Workers Compensation Act are hereby assessed against respondent and its insurance carrier to be paid as follows:

William V. Denton & Associates

Not available

|                                  |            |
|----------------------------------|------------|
| Metropolitan Court Reports, Inc. | \$1,382.00 |
| Hostetler & Associates, Inc.     | \$ 304.00  |

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Curtis L. Hursh, Kansas City, MO  
Gregory D. Worth, Lenexa, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director